



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|--|-------------|----------------------|---------------------|------------------|
| 09/145,167 | 09/01/1998 | IRENE HU FERNANDEZ | FERN-P004 | 5652 |
| 22877 | 7590 | 09/19/2006 | EXAMINER | |
| FERNANDEZ & ASSOCIATES LLP 1047 EL CAMINO REAL SUITE 201 MENLO PARK, CA 94025 | | | WU, RUTAO | |
| | | | ART UNIT | PAPER NUMBER |
| | | | 3639 | |

DATE MAILED: 09/19/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

| | | | |
|------------------------------|------------------------|---------------------|--|
| Office Action Summary | Application No. | Applicant(s) | |
| | 09/145,167 | FERNANDEZ ET AL. | |
| | Examiner | Art Unit | |
| | Rob Wu | 3639 | |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 18 July 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 21-26 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 21-26 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Continued Examination Under 37 CFR 1.114

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on July 18 2006 has been entered.

Claim Rejections - 35 USC § 103

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claims 21, 24, 22, 25 are rejected under 35 U.S.C. 103(a) as being unpatentable over Alexander et al (US 6,177,931), in further view of Ballantyne et al (US 5,867,821), as applied to claim 1 above, and further in view of Peifer et al (US 5,987,519).

As per claim 21, Alexander et al discloses:

an interface for receiving a video stream from the network, (Col. 8, line 66-Co1.9, line 1, viewing user's video interface, in this case the video stream is being received by

the television in order for the viewer to view visual data on the television through the viewer's interface);

a controller for causing the video stream to be stored in a digital video recorder, such stored video being accessible for play-back using a software search agent, (Col. 12, lines 11-21, EPG records on recordable digital video discs in this case, the digital video recorder [DVR] can only record its data on digital video media such as digital video discs [DVDs], also shows that when viewer is ready to view the DVD recording, the viewer can select to view through the EPG); and

a sensor for generating a real-time signal for transmission via the network interface, (Col. 32, lines 51-54, shows the transmission of a television signal in real time along with the message or advertisement, in this case, the sensor is inherent with Alexander et al since in television, specific types of sensors are needed to produce television signals); the real-time signal enabling such set-top apparatus to be classified in a promotional group for targeted messaging, whereby a promotion video stream is directed to the set-top apparatus adaptively in response to the real-time signal, (col. 31 lines 9-14, shows profile program (which collects user profile data) uses autosurfing that can be performed during real-time advertising telecasts, therefore, when the advertising is telecast, these advertisement signals are transmitted to the television for the viewer to be profiled, w/col. 29, lines 22-30, shows more support for viewer profile data to be represented on a real-time basis, w/col. Col. 35, lines 48-50 and lines 53-54, shows collecting viewer profile data and selecting an advertisement is based on the viewer

profile data, which represents targeted advertisement, and displaying the selected advertisement on the television screen).

Alexander et al fails to disclose the following, but does disclose a television program interactive program that allows a user to access product information.

However, Ballantyne et al discloses:

the received video stream comprising a biomedical expertise message for clinical diagnosis that is contextually mapped to a patient group by comparing automatically with an associated value stored in a database a patient diagnosis sensed using the sensor comprising a micromachined transducer coupled to a diagnosed patient, the biomedical expertise message being scheduled for viewing by one or more patient belonging to the patient group, (Abstract, lines 1-16, shows that a patients/medical personnel can interact with the medical information (in this case, the specification of "biomedical" as a type of claim amounts to the recitation of non-functional data; the type of claim has no bearing on the invention as claimed, and thus carries no patentable weight, therefore, the examiner interprets the medical information as biomedical information) network via television set or video monitor, w/col. 9, lines 32-37, shows that the patient is allowed to access clinical data, w/Col. 10, lines 10-20, shows classification of users, also shows that patient record information can be retrieved and made available for viewing at the bedside through the PCS by physician so he can view the patient's symptoms, and enter in observations accordingly, w/col. 18, lines 32-36, shows that the electronic PCS are located at each patient's bedside and allows the patient to communicate with the nursing station server system, (therefore, patient has access to

information at the PCS), w/Co1.15, lines 35-39, shows that personal messages are routed to the appropriate medical staff concerning electronic medical records from a master library of updated records, by way of unique one to one relationships established between the users pen and the PDA each time the PDA is loaded into its docking slot located at a nursing station, its software clock is synchronized with the clock of the master library [represents the value stored in a database], w/col. 11, lines 12-27, shows health record information is accessed from the master library and modified with up-to-date medical diagnostic data by means of the PDA; here, the PCS interfaces with the PDA to register and track patient characteristics and transmits the results back to the master library, which is updated with medical diagnostic data, in this case, the PCS serves as the transducer since it facilitates the out-sourcing of health care, and the patient therefore has access to the diagnosis data since this data is stored in the master library and can be retrieved through the PCS). Ballantyne et al discloses this limitation in an analogous art for the purpose of showing that patient diagnosis data can be accessed in an electronic patient care station environment.

It would have been obvious to one of ordinary skill in the art at the time of the applicant's invention to incorporate biomedical expertise message for clinical diagnosis into an interactive digital television set-top apparatus with the motivation of allowing targeted messaging in a biomedical environment.

Alexander combined with Ballantyne et al does not expressly disclose that the sensor is for measuring or monitoring an organic material of the patient coupled to the sensor transducer that senses the organic material, such that the sensor transducer

generates therefrom the personal biological sensor signal for enabling such patient to be diagnosed via the biomedical expertise message that is adapted to the personal biological sensor signal measurement or monitoring of the organic material as generated by the sensor transducer.

However, Peifer et al disclose that medical devices within the system can include blood pressure devices, thermometers, pulse oximetry devices, electrocardiograms (EKGs)... (col 6: lines 37-40) and the central monitoring station can then process the information to determine which patient caused the information to be sent, the type of diagnostic measurement comprised in the information, and the diagnostic measurement represented by the information. (col 3: lines 62-65)

Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify Alexander combined with Ballantyne et al to include monitoring a patient's organic material and using that information to cause a diagnoses of the patient. Alexander and Ballantyne et al would be motivated to combine to be able to better care for the patients and respond to patient's changing medical conditions as monitored by the medical devices.

As per claim 24, Alexander et al discloses:

receiving a video stream from via a network interface, (Col. 8, line 66-Co1.9, line 1, viewing user's video interface, in this case the video stream is being received by the television in order for the viewer to view visual data on the television through the viewer's interface);

Art Unit: 3639

storing the video stream in a digital video recorder for play-back, such stored video being accessible using a software search agent, (Col. 12, lines 11-21, EPG records on recordable digital video discs in this case, the digital video recorder [DVR] can only record its data on digital video media such as digital video discs [DVDs], also shows that when viewer is ready to view the DVD recording, the viewer can select to view through the EPG); and

generating a sensor signal for transmission via the network interface, the signal enabling set-top classification in a promotional group for targeted messaging, whereby a promotion video stream is directed adaptively in response to the signal, (Col. 32, lines 51-54, shows the transmission of a television signal in real time along with the message or advertisement, in this case, the sensor is inherent with Alexander et al since in television, specific types of sensors are needed to produce television signals, w/col. 31 lines 9-14, shows profile program (which collects user profile data) uses autosurfing that can be performed during real-time advertising telecasts, therefore, when the advertising is telecast, these advertisement signals are transmitted to the television for the viewer to be profiled, w/col. 29, lines 22-30, shows more support for viewer profile data to be represented on a real-time basis, w/col. Col. 35, lines 48-50 and lines 53-54, shows collecting viewer profile data and selecting an advertisement is based on the viewer profile data, which represents targeted advertisement, and displaying the selected advertisement on the television screen);

Alexander et al fails to disclose the following, but does disclose a television program interactive program that allows a user to access product information.

However, Ballantyne et al discloses:

the received video stream comprising a biomedical expertise message for clinical diagnosis that is contextually mapped to a patient group by comparing automatically with an associated value stored in a database a patient diagnosis sensed using the sensor comprising a micromachined transducer coupled to a diagnosed patient, the biomedical expertise message being scheduled for viewing by one or more patient belonging to the patient group, (Abstract, lines 1-16, shows that a patients/medical personnel can interact with the medical information (in this case, the specification of "biomedical" as a type of claim amounts to the recitation of non-functional data; the type of claim has no bearing on the invention as claimed, and thus carries no patentable weight, therefore, the examiner interprets the medical information as biomedical information) network via television set or video monitor, w/col. 9, lines 32-37, shows that the patient is allowed to access clinical data, w/Col. 10, lines 10-20, shows classification of users, also shows that patient record information can be retrieved and made available for viewing at the bedside through the PCS by physician so he can view the patient's symptoms, and enter in observations accordingly, w/col. 18, lines 32-36, shows that the electronic PCS are located at each patient's bedside and allows the patient to communicate with the nursing station server system, (therefore, patient has access to information at the PCS), w/Co1.15, lines 35-39, shows that personal messages are routed to the appropriate medical staff concerning electronic medical records from a master library of updated records, by way of unique one to one relationships established between the users pen and the PDA each time the PDA is loaded into its docking slot

Art Unit: 3639

located at a nursing station, its software clock is synchronized with the clock of the master library [represents the value stored in a database], w/col. 11, lines 12-27, shows health record information is accessed from the master library and modified with up-to-date medical diagnostic data by means of the PDA; here, the PCS interfaces with the PDA to register and track patient characteristics and transmits the results back to the master library, which is updated with medical diagnostic data, in this case, the PCS serves as the transducer since it facilitates the out-sourcing of health care, and the patient therefore has access to the diagnosis data since this data is stored in the master library and can be retrieved through the PCS). Ballantyne et al discloses this limitation in an analogous art for the purpose of showing that patient diagnosis data can be accessed in an electronic patient care station environment.

It would have been obvious to one of ordinary skill in the art at the time of the applicant's invention to incorporate biomedical expertise message for clinical diagnosis into an interactive digital television set-top apparatus with the motivation of allowing targeted messaging in a biomedical environment.

Alexander combined with Ballantyne et al does not expressly disclose that the sensor is for measuring or monitoring an organic material of the patient coupled to the sensor transducer that senses the organic material, such that the sensor transducer generates therefrom the personal biological sensor signal for enabling such patient to be diagnosed via the biomedical expertise message that is adapted to the personal biological sensor signal measurement or monitoring of the organic material as generated by the sensor transducer.

However, Peifer et al disclose that medical devices within the system can include blood pressure devices, thermometers, pulse oximetry devices, electrocardiograms (EKGs)... (col 6: lines 37-40) and the central monitoring station can then process the information to determine which patient caused the information to be sent, the type of diagnostic measurement comprised in the information, and the diagnostic measurement represented by the information. (col 3: lines 62-65)

Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify Alexander combined with Ballantyne et al to include monitoring a patient's organic material and using that information to cause a diagnoses of the patient. Alexander and Ballantyne et al would be motivated to combine to be able to better care for the patients and respond to patient's changing medical conditions as monitored by the medical devices.

As per claim 22, neither Alexander nor Ballantyne et al disclose that the sensor comprises a DNA or protein probe, whereby the promotion video stream comprises a tele-medicine application associated with sensed DNA or protein, but Alexander does disclose sensing viewer characteristics through a profile program which collects user profile data in col. 31 lines 9-14.

However, Peifer et al discloses:

The sensor comprises a DNA or protein probe, whereby the promotion video stream comprises a tele-medicine application associated with sensed DNA or protein, (Col. 3, lines 35-46, shows a telemedicine system that obtains medical measurement data from a patient and sends this information over a network such as a Community

Access Television (CATV) network, in this case, the sensed DNA or protein data is obvious with the telemedicine data since the telemedicine measurement includes medical measurement data, and sensed DNA or protein data is medical measurement data). Peifer et al discloses this limitation in an analogous art at the time of the applicant's invention to obtain medical measurement data from the patient, and to transmit these measurements over a television network.

It would have been obvious to one of ordinary skill in the art at the time of the applicant's invention to have a sensor to comprise a DNA or protein probe, whereby the promotion video stream comprises a tele-medicine application associated with sensed DNA or protein with the motivation of using tele-medical applications to target advertisements.

As per claim 25, neither Alexander nor Ballantyne et al disclose that the signal is generated by a DNA or protein probe, whereby the promotion video stream comprises a tele-medicine application associated with sensed DNA or protein, but Alexander does disclose sensing viewer characteristics through a profile program which collects user profile data in col. 31 lines 9-14.

However, Peifer et al discloses:

the signal is generated by a DNA or protein probe, whereby the promotion video stream comprises a tele-medicine application associated with sensed DNA or protein, (Col. 3, lines 35-46, shows a telemedicine system that obtains medical measurement data from a patient and sends this information over a network such as a Community Access Television (CATV) network, in this case, the sensed DNA or protein data is

obvious with the telemedicine data since the telemedicine measurement includes medical measurement data, and sensed DNA or protein data is medical measurement data). Peifer et al discloses this limitation in an analogous art at the time of the applicant's invention to obtain medical measurement data from the patient, and to transmit these measurements over a television network.

It would have been obvious to one of ordinary skill in the art at the time of the applicant's invention to have a sensor to comprise a DNA or protein probe, whereby the promotion video stream comprises a tele-medicine application associated with sensed DNA or protein with the motivation of using tele-medical applications to target advertisements.

4. Claims 23 and 26 are rejected under 35 U.S.C. 103(a) as being unpatentable over Alexander et al (US 6,177,931) in view of Ballantyne et al, (US 5,867,821), in further view of (US 5,987,519) to Peifer et al, and further in view of Hill et al (US 5,857,155).

As per claim 23, none of Alexander, Ballantyne et al or Peifer et al disclose the sensor comprises a GPS location device, whereby the promotion video stream comprises a vehicular or mobile application associated with sensed location, but Alexander does sensing viewer characteristics through a profile program which collects user profile data in col. 31 lines 9-14.

However, Hill et al discloses:

the sensor comprises a GPS location device, whereby the promotion video stream comprises a vehicular or mobile application associated with sensed location, (Col. 2, lines 31-38, shows use of geographic information from a GPS satellite to enhance the efficiency and accuracy of targeted messaging). Hill et al discloses this limitation in an analogous art for the purpose of showing that targeted messaging can result from the input of geographic information.

It would have been obvious to one of ordinary skill in the art at the time of the applicant's invention for the sensor to comprise a GPS location device, whereby the promotion video stream comprises a vehicular or mobile application associated with sensed location with the motivation of using gps applications to target advertisements.

As per claim 26, none of Alexander, Ballantyne et al or Peifer et al disclose the signal is generated by a GPS location device, whereby the promotion video stream comprises a vehicular or mobile application associated with sensed location, but Alexander does sensing viewer characteristics through a profile program which collects user profile data in col. 31 lines 9-14.

However, Hill et al discloses:

the signal is generated by a GPS location device, whereby the promotion video stream comprises a vehicular or mobile application associated with sensed location, (Col. 2, lines 31-38, shows use of geographic information from a GPS satellite to enhance the efficiency and accuracy of targeted messaging). Hill et al discloses this limitation in an analogous art for the purpose of showing that targeted messaging can result from the input of geographic information.

It would have been obvious to one of ordinary skill in the art at the time of the applicant's invention for the sensor to comprise a GPS location device, whereby the promotion video stream comprises a vehicular or mobile application associated with sensed location with the motivation of using gps applications to target advertisements.

Conclusion

5. Examiner's Note: Examiner has cited particular columns and line numbers in the references as applied to the claims below for the convenience of the applicant.

Although the specified citations are representative of the teachings in the art and are applied to the specific limitations within the individual claim, other passages and figures may apply as well. It is respectfully requested that the applicant, in preparing the responses, fully consider the references in entirety as potentially teaching all or part of the claimed invention, as well as the context of the passage as taught by the prior art or disclosed by the examiner.


Any inquiry concerning this communication or earlier communications from the examiner should be directed to Rob Wu whose telephone number is (571)272-3136.

The examiner can normally be reached on Mon-Fri 8-5.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John Hayes can be reached on (571)272-6708. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

rw


JOHN W. HAYES
SUPERVISORY PATENT EXAMINER